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ATTACHMENT 4.35-B
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: MAINE

ALTERNATIVE REMEDIES TO SPECIFIED REMEDIES FOR
SKILLED NURSING AND INTERMEDIATE
CARE FACILITIES

Alternative remedies such as cessation of all new admissions, directed plans of corrected, etc., to specified remedies for skilled nursing and intermediate care facilities are contained in the enclosed Chapter 24, Enforcement, to the Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Intermediate Care Facilities.

TN No. 90-06
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TN No. _____

Approval Date JUN 27 1990

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OFFICIAL



John R. McKernan, Jr.
Governor

Rollin Ives
Commissioner

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE 04333

February 14, 1990

TO: Interested Parties *Fuller*
FROM: Elaine *Fuller*, Director, Bureau of Medical Services
SUBJECT: Final Rules Chapter 24 - Enforcement

Attached is a copy of the final rules which establish Chapter 24 Enforcement to the Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Intermediate Care Facilities.

These final rules allow the Department of Human Services to impose intermediate sanctions in accordance with the Omnibus Budget Reconciliation Act of 1987, Subtitle C - Nursing Home Reform and 22 Maine Revised Statutes Annotated Sections 7942-7947. The rules establish general procedures for enforcement, establish intermediate sanctions and grounds for imposition of intermediate sanctions, procedures for imposing financial penalties on nursing homes, the schedule of penalties, reduction or delay of penalties, other sanctions for failure to comply with applicable laws/regulations and appeals procedures.

A public hearing was held on November 2, 1989. Comments were accepted through November 13, 1989. All comments were reviewed and considered.

These rules are effective March 2, 1990. Should you have any questions, please contact Louis T. Dorogi, Director, Division of Licensing and Certification at 289-2606.

EF:ejl

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- 24.A. Definitions. For the purposes of this Chapter, the following words have the following meanings:
- 24.A.1. "Deficiency" means a failure to comply with State licensing regulations.
- 24.A.2. "Directed Plan of Correction" means a plan of correction issued by the Department which directs a nursing home how and when to correct any deficiency or deficiencies.
- 24.A.3. "Division" means the Division of Licensing and Certification.
- 24.A.4. A "failure to correct any deficiency" occurs when a nursing home does not remedy a deficiency within the time established in a plan of correction or directed plan of correction or if an extension has been granted by the Division, within the period of that extension.
- 24.A.5. "False information" means written or verbal statements or representations of fact that are not true and that were made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not they were true.
- 24.A.6. "Impede or interfere with the enforcement of laws or regulations" means either a failure to provide to Division representatives information that is necessary to determine compliance with licensure laws or regulations, failure to allow Division representatives access to a nursing home or any part of a nursing home, failure to preserve evidence related to a particular violation, or retaliation against residents/employees for lodging of complaints with the Department of Human Services.
- 24.A.7. "Person" means any natural person, partnership, association or corporation or other entity, including any county, local or governmental unit.

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- 24.A.8. "Plan of Correction" means a document executed by a nursing home in response to a statement of deficiencies issued by the Division.
- 24.A.9. "Resident" means any person who resides in and receives services or care in a nursing home.
- 24.A.10. "Resident's rights" means those rights enumerated in either the Resident's Rights Act, 22 M.R.S.A. Section 7921 et seq., Chapter 13 of these regulations or 42 USC Section 1396 r (c).
- 24.A.11. "A repeated deficiency" occurs whenever a nursing home fails to comply with the same State licensing regulation or fails to comply with the same requirement of 42 USC Section 1396 r (b), (c) or (d) on more than one occasion within a two year period.
- 24.A.12. "State licensing regulations" refers to the Division's regulations governing the licensing and functioning of nursing homes.
- 24.A.13. "Statement of Deficiencies" means a document issued by the Division which describes a nursing home's deficiencies in complying with State licensing regulations.
- 24.A.14. "Substantial probability" refers to something that is more likely to occur than not.
- 24.A.15. "Substantial Risk", with respect to a particular condition or event, refers to a danger that would be considered unacceptable to a reasonable person who is aware of the consequences of that condition or event.
- 24.A.16. "Submit" means to deposit in the U.S. Mail or to hand-deliver to the Division of Licensing and Certification.

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24.A.17. "Timely corrective action" refers to the date stated in a plan of correction by which a specific deficiency will be corrected, or the date by which that specific deficiency must be corrected pursuant to a directed plan of correction, whichever is earliest.

24.A.18. "Working days" means weekdays excluding any weekday that a statement of deficiency is received and excluding legal holidays.

24.B. General Procedures for Enforcement

24.B.1. Licensing inspections. Each nursing home will be inspected prior to being issued its initial license and annually thereafter prior to renewal of a license. The Division may also inspect at any other time to determine compliance with State licensing regulations.

24.B.2. Statement of Deficiencies. After any inspection, a statement of deficiencies will be sent to the facility if the inspection discloses any failure to comply with State licensing regulations. A statement of deficiencies will be accompanied by either a plan of correction form or a directed plan of correction.

24.B.3. Plans of Correction. If mailed a plan of correction form, the provider must complete it by indicating how and when any deficiency will be or has been corrected, and submit it to the Division within ten working days of receipt of any statement of deficiencies. The Division will have ten (10) days after receipt to determine whether it accepts the Plan of Correction.

24.B.4. Failure to Correct Deficiencies. The failure to correct any deficiency or deficiencies or to file a plan of correction with the Division may lead to the imposition of sanctions or penalties as described in this Chapter.

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- 24.C. Intermediate Sanctions. The Division is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in section 24.D., below, are present and the Division determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations or to protect the residents of a nursing home or the general public.
- 24.C.1. The Division may direct a nursing home to stop all new admissions regardless of payment source or to admit only those residents the Division approves, until such time as it determines that corrective action has been taken.
- 24.C.2. The Division may issue a directed plan of correction.
- 24.C.3. The Division may impose a financial penalty upon a nursing home.
- 24.D. Grounds for Intermediate Sanctions. The following circumstances shall be grounds for the imposition of intermediate sanctions:
- 24.D.1. Operation of a nursing home without a license.
- 24.D.2. Impeding or interfering with the enforcement of laws or regulations governing the licensing of nursing homes, or giving false information in connection with the enforcement of such laws and regulations.
- 24.D.3. Failure to submit a plan of correction within ten (10) working days after receipt of a statement of deficiencies.
- 24.D.4. Failure to take timely corrective action in accordance with a plan of correction or a directed plan of correction.
- 24.D.5. Failure to comply with State licensing laws or regulations when this failure poses an immediate threat of death or substantial probability of

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serious mental or physical harm to a resident or residents.

- 24.D.6. The occurrence of a repeated deficiency that poses a substantial risk to any resident's health or safety or infringes upon any resident's rights.
- 24.D.7. Failure to comply with 42 United States Code, Title 42, Section 1396 r (b) Requirements Relating to Provision of Services; (c) Requirements Relating to Residents' Rights; and (d) Requirements Relating to Administration and Other Matters.

24.E. Procedure for Imposing Financial Penalties on Nursing Homes

- 24.E.1. Assessment of Financial Penalties. Upon review or inspection of a nursing home, the Division of Licensing and Certification will compile a list of deficiencies found (if any) and send out a Statement of Deficiencies. The Division will also review the deficiencies to ascertain whether there are any grounds for assessment of financial penalties in accordance with sections 24.C., 24.D., and 24.F. of this Chapter. If the Division determines it is appropriate to assess financial penalties against a nursing home, based on a Statement of Deficiencies, the Division shall issue to that facility an Assessment of Financial Penalties. That assessment shall describe the grounds for the imposition of the penalty, the regulation or law that has been violated, and the scheduled amount of the fine corresponding to that violation.

Penalties shall accrue with interest for each day that grounds for imposition of the penalty exist, after the date upon which an Assessment of Financial Penalties is issued. The burden of demonstrating correction of the grounds that support any penalty rests with the facility.

In any instance where the Division imposes a penalty or penalties for conduct described in

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section 24.D.7., penalties will not be imposed pursuant to sections 24.D.5. or 24.D.6. for that same conduct.

- 24.E.2. Payment of Penalty. If the nursing home does not contest the imposition or amount of a penalty assessed by the Division, the facility must pay the Department the amount of that penalty within thirty (30) days of receipt of the Assessment of Penalties. The Department may offset against any reimbursement due the facility the amount of any penalties that are outstanding after this time period.
- 24.E.3. Informal Conference. If a nursing home disagrees with the imposition or amount of any penalty assessed by the Division, the facility must notify the Division in writing, stating the nature of the disagreement, within ten (10) working days of a receipt of an Assessment of Penalties. Upon receipt of this request, the Director of the Division of Licensing and Certification or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Division Director or his/her designee shall inform the facility of the result of the informal conference in writing. A facility which desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference must request an administrative hearing, pursuant to section 24.G.6. The Department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.
- 24.E.4. Compliance with Regulations. A request for an informal conference or for an administrative review of the results of an informal conference shall not affect any nursing home's obligation to comply with State licensing laws and regulations.

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24.F. Amount of Penalties. The Division will determine the amount of any penalty to be imposed against a nursing home according to the following classification system:

<u>Class</u>	<u>Grounds for Penalty</u>	<u>Amount</u>	<u>Repeat</u>
<u>Class I</u>	Any failure to comply with State licensing laws, regulations, or 42 USC, Section 1396 r (b), (c), or (d) that poses an immediate threat of death to a resident or residents; operation of a nursing home without a license; or impeding, interfering, or giving false information in connection with the enforcement of laws or regulations governing nursing home licensure.	\$4.50 per licensed bed per occurrence*	\$5.00
<u>Class II</u>	Any failure to comply with State licensing laws, regulations or 42 USC Section 1396 r (b), (c), or (d) or any regulations imposed pursuant to these laws that poses a substantial probability of serious mental or physical harm to a resident or residents; failure to submit a plan of correction within ten (10) working days after receipt of a statement of deficiencies; or	\$4.00 per licensed bed per occurrence	\$4.50

* "\$4.50 per licensed bed per occurrence" means, for example, that a facility with 50 licensed beds would be assessed a penalty of \$225 (\$4.50 per resident x 50 licensed beds) for a single instance of a Class I violation.

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<u>Class</u>	<u>Grounds for Penalty</u>	<u>Amount</u>
	failure to take timely corrective action in accordance with a plan of correction or directed plan of correction.	
<u>Class III</u>	The occurrence of a repeated deficiency that poses a substantial risk to a resident's or residents' health or safety.	\$3.00 per licensed bed per occurrence
	Any failure to comply with 42 USC Section 1396 r (b), (c) or (d) which is not included either as a Class I or Class II violation.	\$5.00 per licensed bed

24.F.1. Maximum Penalty. The maximum penalty the Division may impose in any instance in which it issues an Assessment of Financial Penalties subsequent to issuance of a Statement of Deficiencies to a nursing home shall be \$5,000.

24.F.2. Reduction or Delay of Penalties. Nursing homes which are unable to immediately pay a penalty may apply to the Division of Licensing and Certification to have payment of that penalty delayed, paid in installments, or, in certain circumstances, reduced.

In order to have the payment of a fine delayed or paid in installments, a nursing home must provide sufficient information, on forms provided by the Division of Licensing and Certification, to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.

In order to have a fine reduced, a nursing home must, on forms provided by the Division of Licensing and Certification, demonstrate that